

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 05-0417P
Withholding Tax
For the Calendar Year 2004

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of the DB020W-NR annual withholding return for nonresident shareholders for the calendar year 2004. The taxpayer is an out-of-state company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the taxpayer has a complex accounting system and was not able to assemble the information to complete the withholding return by the due date.

The Department points out that the taxpayer could have paid an estimate and the applied for a refund at a later date.

The regulation which controls the application of penalty is 45 IAC 15-11-2(b) which states,

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.
Negligence would result from a taxpayer's

carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.